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South Carolina House of Representatives

Legislative Update

David H. Wilkins, Speaker of the House

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WEEK IN REVIEW – FEBRUARY 8-12, 1999

HOUSE FLOOR

The House of Representatives amended, approved, and sent to the Senate H.3181 which targets frivolous lawsuits filed by the state's prisoners. H.3181 requires a complaint filed on behalf of a prisoner to include the inmate's assigned number. The bill also allows a court to dismiss without prejudice a civil action brought by a prisoner against a victim or witness when a prisoner fails to pay certain filing fees and court costs. Under H.3181, a prisoner may be subject to forfeiting all or part of his or her work, education, or good conduct credits for misconduct in cases brought by the prisoner against a victim or witness in connection with a crime the prisoner has been convicted of regardless of whether or not the prisoner was incarcerated for that crime. The bill also requires the Department of Corrections to maintain a data base of prisoners who file civil actions. The Insurance Reserve Fund must also maintain a data base of prisoners who file civil actions against its insureds. The Department of Corrections and the Insurance Fund are charged with notifying the Attorney General if an inmate violates the provisions of this bill.

Before approving H.3181, the House removed a provision which would have prohibited an inmate from filing a civil action or appealing a judgment in a civil action, if while in prison the inmate has had three actions in either state or federal court dismissed on the grounds that they were either frivolous, malicious, or failed to state a cause of action.

The House gave final reading to S.399 and enrolled the bill for ratification. The legislation is designed to allow the new automobile insurance rate filing system provided under the comprehensive automobile insurance restructuring of Act 154 of 1997 to proceed according to the schedule intended by the General Assembly. Act 154 of 1997 allows auto insurers a "file and use" option under which rate increases or decreases which differ from current rates by no more than seven percent may go into effect without a prior approval process. A recent action by the South Carolina Supreme Court would subject insurers to the present approval and notification process for rate changes until March 1, 1999, when the new system provided under Act 154 of 1997 takes effect. In response, S.399 would allow the new rate filing system to take effect immediately, allowing auto insurers to proceed with the transition into the state's revised automobile insurance system.

The House approved and sent to the Senate H.3415 which raises the hours of classroom instruction which must be completed before applying to take a license examination as a real estate salesman or broker. The requirement for a salesman is raised from thirty to sixty hours of pertinent classroom instruction, and the requirement for a broker is raised from one hundred twenty to one hundred fifty hours, with ninety, rather than sixty, of those hours devoted to advanced real estate principles and practices and related topics.

The House approved and sent to the Senate H.3030 which provides that a local school district is authorized to excuse up to three days of school that have been missed due to snow or other extreme weather conditions.

The House gave second reading to H.3445 which repeals the current \$120 million limit on outstanding state institution bonds.

SENATE FLOOR

On Friday, February 5, the Senate received a report from the Committee to Study Consumer Finance Laws. The Committee's purpose was to study the impact of Act 135 of 1995, which made a number of changes relating to restricted and supervised lenders. The Committee's scope was expanded pursuant to Act 99 of 1997 to cover "such other matters as the committee deems appropriate." Pursuant to this expanded authority, the Committee also studied title loans, check cashing businesses and businesses deferring presentment of checks, non-file insurance, rent-to-own transactions, and repossession businesses.

JOINT ASSEMBLY

On Wednesday, February 10, the House and Senate met in Joint Assembly to conduct judicial elections. The following individuals were elected: The Honorable Carol Connor, Court of Appeals Judge, Seat 1; The Honorable William L. Howard, Court of Appeals Judge, Seat 2; The Honorable Paul E. Short, Jr., Circuit Court Judge, Sixth Judicial Circuit, Seat 1; The Honorable John M. Milling, Circuit Court Judge, At-Large, Seat 1; The Honorable J. C. "Buddy" Nicholson, Jr., Circuit Court Judge, At-Large, Seat 7; The Honorable Alison Renee Lee, Circuit Court Judge, At-Large, Seat 11; The Honorable Wesley L. Brown, Jr., Family Court Judge, Seventh Judicial Circuit, Seat 3; The Honorable Joseph W. McGowan, Family Court Judge, Eighth Judicial Circuit, Seat 1; The Honorable Henry T. Woods, Family Court Judge, Sixteenth Judicial Circuit, Seat 2; and, The Honorable Marvin F. Kittrell, Administrative Law Judge, Chief Judge, Seat 1.

HOUSE COMMITTEE ACTION

AGRICULTURE, NATURAL RESOURCES, AND ENVIRONMENTAL AFFAIRS

The full Agriculture, Natural Resources, and Environmental Affairs Committee did not meet this week.

EDUCATION AND PUBLIC WORKS

The full Education and Public Works Committee gave a favorable recommendation to H.3030. This bill allows local school boards to excuse up to three days missed because of snow or other extreme weather conditions. Current law requires that days missed because of such conditions must be made up. The committee gave a favorable recommendation to H.3096. This bill prohibits (except under specified conditions) a

school district superintendent from receiving, for the performance or continuation of his duties, a salary supplement or other consideration above two hundred dollars. The bill also provides penalties for violation. The committee adjourned debate on H.3219. This bill requires that the State Board of Education establish a uniform grading system to be used by all public schools in South Carolina. The committee amended and gave a favorable report H.3040. This bill exempts from the requirements to obtain a driver's license a citizen of Germany or Japan who is at least eighteen years old, who is employed in South Carolina, and who has a valid driver's license issued by his nation. The bill provides that such a person may drive in this state for four years. Current law allows this exemption only for citizens of France. The committee amended the bill so as to allow a citizen from any foreign country, under certain circumstances, to drive in South Carolina. The committee tabled H.3025. This bill amends the current statutory point system for the evaluation of a person's driving record by adding a provision that careless driving (as defined by local ordinance) is a one point violation.

JUDICIARY

The full Judiciary Committee did not meet this week.

LABOR, COMMERCE AND INDUSTRY

The full House Labor, Commerce and Industry Committee did not meet this week.

MEDICAL, MILITARY, PUBLIC AND MUNICIPAL AFFAIRS

The full 3-M Committee tabled H.3045, which concerns renewal of cosmetology licenses. Currently, individuals holding a cosmetology license are required to complete continuing education on a yearly basis in order to renew their licenses. This bill exempts individuals from the continuing education requirement under specified conditions.

WAYS AND MEANS

The full Ways and Means Committee did not meet this week.

BILLS INTRODUCED IN THE HOUSE THIS WEEK

AGRICULTURE, NATURAL RESOURCES, AND ENVIRONMENTAL AFFAIRS

H.3516 HUNTING WATERFOWL Rep. Witherspoon

This bill prohibits the following: (1) trespassing while hunting waterfowl, (2) taking waterfowl over bait, (3) taking more than one waterfowl over the legal limit, (3) hunting

waterfowl out of season, and (4) hunting waterfowl before or after designated shooting hours. Penalties are established for failure to comply.

EDUCATION AND PUBLIC WORKS

H.3497 SCHOOL TRANSPORTATION Rep. W. McLeod

This bill revises current distance requirements that govern when the State may assume the obligation of transporting students to school. Current law provides that the State may assume this obligation for students living within one and one-half miles of their schools and within a one-half mile radius of their residences when it is for the health and safety of the child. This bill provides that the State may assume the obligation for students living within one and one-half miles of their schools and within a *one-quarter* mile radius of their residences when it is for the health and safety of the child.

H.3517 STUDENT SUSPENSION Rep. Kennedy

Current law provides that when a pupil is suspended from school, the pupil's parents or guardian must have a conference with the school administrator within three days of the date of the suspension. This bill strikes the three-day requirement and adds language stating that pupils may not be allowed to re-enter school until such conference has been held. The bill also adds a provision that if a pupil has been suspended twice in a school year, the local school board may require as part of his re-admission if he is suspended again, that the pupil's parents or guardian "shadow them for a minimum of two hours per day for a period of up to three days."

JUDICIARY

H.3486 SOCIAL SECURITY NUMBERS OF PARTIES TO JUDGMENTS

Rep. Altman

Under this bill, clerks of court and magistrates would be required to document the social security numbers of parties to the action on the judgment. This bill requires entries in the book called Abstract of Judgments to include the parties' social security numbers. This bill also requires a transcript of a final judgment of any court of record in this State or of any district or circuit court of the United States within this State to include the parties' social security numbers.

H.3494 COUNTY OFFICERS Rep. Cotty

This bill amends *South Carolina Code of Laws* §4-1-80, relating to the requirement that a governing body of a county must furnish county officers with office space, furniture, stationery, and other incidentals necessary to carry out the function of that office. This bill establishes a procedure for submitting an annual appropriations request for funding requests by an elected county officer. This bill defines the term "elected county officer." Under this bill, the officer shall exercise authority over his or her budget once it is adopted. This bill has provisions detailing when an officer's budget may be reduced. This bill also has provisions for resolution of disputes between county councils and county officers.

H.3495 LIABILITY FOR DAMAGE OF PERSONS WHO HOLD A LICENSE TO SELL ALCOHOLIC LIQUORS, BEER, OR WINE FOR ON OR OFF PREMISES CONSUMPTION Rep. Davenport

This bill provides that (1) a person who holds a license to sell alcoholic liquors, beer, or wine for on or off premises consumption, (2) the managers of the establishment where the beverages are sold, and (3) the employees of the establishment where the beverages are sold are liable for certain damages if they negligently sell or furnish these beverages to underage or intoxicated persons.

Under this bill, damages are limited to not more than one hundred thousand dollars a person and three hundred thousand dollars for each occurrence. The claim for relief created by this bill is in addition to any other statutory or common law relief. **H.3495** also requires holders of these licenses to furnish the department of revenue with proof of financial responsibility in meeting any liability that may arise under this bill.

H.3499 ANNEXATION Rep. Davenport

This bill provides for additional requirements before property may be annexed in accordance with *South Carolina Code of Laws* §5-3-150, relating to the method of annexation where all or seventy-five percent of the landowners sign a petition. The additional requirements include the following:

- (1) 30 days before the beginning of annexation activities or initiatives by a municipality, the annexing municipality must give written notification to all freeholders, residents, public service or special purpose districts, and all organizations which provide a public service
- (2) The notice must include a copy of the written petition statement, dates for commencement and completion of the annexation activities, a map of the proposed annexed area, a statement as to what public services are to be assumed by the municipality, the financial impact on each annexed business and residence, and the financial impact on each public service organization that is presently providing services in the proposed annexation area. The impact statement must also include the financial impact on the surrounding community.
- (3) property must be annexed in complete parcels so that no parcel of property is partially annexed
- (4) rivers may not be used to establish contiguity by municipalities
- (5) in legal actions, municipalities may be required to reimburse all attorney's fees of the opposing parties if the municipalities have performed illegal or improper annexation
- (6) for purposes of bringing legal action, "legal standing" includes service organizations providing services in the proposed annexation area at the time the area is annexed

This bill also amends *South Carolina Code of Laws* §5-3-310, relating to the annexation of special purpose districts, so as to provide that the provisions of *South Carolina Code of Laws* §5-3-150 also apply to this section.

H.3500 MEMBERS OF A MUNICIPAL OR COUNTY ELECTION COMMISSION

Rep. Hawkins

Under this bill, a member of a municipal or county election commission is not eligible for reappointment once removed by the Governor.

H.3509 PERSONAL FINANCIAL SECURITY ACT Rep. Simrill

This bill creates the offense of financial identity fraud. Under the bill, a person is guilty of financial identity fraud when he or she, without the authorization or permission of another person and with the intent of unlawfully appropriating the financial resources of that person for his or her own use or the use of a third party: (1) obtains or records identifying information or (2) accesses or attempts to access the financial resources of the other person through the use of identifying information. The bill has a provision stating what the term "identifying information" includes. In a criminal proceeding, the crime is considered to have been committed in a county in which a part of the financial fraud took place, regardless of whether the defendant was ever actually in that county. Penalties are established for failure to comply.

H.3510 DRIVING UNDER THE INFLUENCE Rep. Simrill

This bill provides that it is unlawful for a person to operate a motor vehicle when he or she has an alcohol concentration of ten one-hundredths of one percent or more.

This bill also amends *South Carolina Code of Laws* §56-2-2950, relating to a driver's implied consent to be tested for alcohol or drugs, so as to revise the testing procedure. Currently, only one breath test is administered. This bill provides for two breath tests to be administered to the driver. If the two readings differ more than four one-hundredths of one percent, then under the bill the test must be repeated. The bill provides that the lower test result may be used in both criminal and civil proceedings.

This bill also provides that a person who has an alcohol concentration of ten-one hundredths of one percent or more is conclusively presumed to have an illegal alcohol concentration.

H.3518 CARELESS OPERATION OF A VEHICLE Rep. Barfield

Under this bill, a law enforcement officer has the discretion to charge a person with careless operation of a vehicle as defined by local ordinance in lieu of charging the person with driving too fast for conditions or speeding. This bill also provides that the offense of careless operation of a vehicle is a zero point violation under the point system for the evaluation of a person's driving record.

H.3519 CRIMINAL TRIALS Rep. Knotts

This bill provides that except for the offense of murder, solicitors must call cases for trial within one year of the indictment. However, the bill does authorize the court to grant a continuance of a case beyond this statutory limit so long as the judge states, on the record, the reasons for granting a continuance and sets a date for the trial.

This bill also requires, with exceptions, that the State must present an indictment within ninety days after a warrant has been issued.

**H.3520 CRIMINAL JURISDICTION OF MAGISTRATES' COURTS AND
MUNICIPAL COURTS Rep. Knotts**

This bill requires, with exceptions, that criminal cases in magistrates' courts and municipal courts must be disposed of within six months of arrest.

LABOR, COMMERCE AND INDUSTRY

**H.3845 CHOICE OF HEALTH CARE PROVIDER UNDER HEALTH INSURANCE
Rep. J. Brown**

This bill provides that no health insurance policy or contract may exclude the right of assignment of benefits to a nonparticipating provider at the same benefit rate as paid to a participating provider.

H.3496 OFFICIAL FEES UNDER THE CONSUMER PROTECTION CODE Rep. Kirsh

This bill revises the definition of "official fees" in the Consumer Protection Code so as to provide that "official fees" does not mean: (1) a premium payable for insurance instead of perfecting a security interest when the security interest is a purchase money security interest, for which, perfection by the filing of a financing statement is not required; (2) a premium payable for insurance instead of perfecting a security interest upon the renewal or refinancing of the sale, lease, or loan, unless the renewal or refinancing occurs more than five years after the initial sale, lease, or loan or unless the actual amount of dollars given to the consumer at the time of the renewal or refinancing is more than ten percent greater than the original loan amount.

H.3513 "SOUTH CAROLINA TITLE LENDERS ACT" Rep. Kirsh

This bill establishes licensure and regulation by the Department of Consumer Affairs for title lenders. A title lender is an individual engaged in the business of lending money on the security of a motor vehicle certificate of title. Civil and criminal penalties are established for violation of the act's provisions.

H.3514 CONSUMER RENTAL-PURCHASE TRANSACTIONS Rep. Kirsh

This bill provides that an individual may not rent or sell personal property pursuant to a consumer rental-purchase agreement unless that individual has obtained a certificate of registration from the Department of Consumer Affairs. A certificate must be obtained for each business location and a fee of ninety dollars must be paid when the certificate is first obtained and on a yearly basis to renew the certificate. The bill authorizes the lessor in a consumer rental-purchase agreement to sell the lessee insurance against the loss or damage to property. The bill establishes a procedure for the sale of this insurance. The bill also provides that a lessor in a rental-purchase agreement must disclose to the consumer the cash price of the property. The bill repeals certain notification requirements for individuals engaged in rental-purchase businesses.

H.3515 CHECK-CASHING AND DEFERRED PRESENTMENT SERVICES Rep. Kirsh

This bill provides for various revisions to regulations imposed upon check-cashing and deferred presentment services. The bill defines a "cash advance" in deferred presentment services and provides that the face amount of a check taken for deferred

presentment or deposit, including the cash advance made to the customer and the fee imposed by the deferred presentment service, may not exceed three hundred forty-five dollars. The bill revises deferred presentment fees so as to provide that the fee may not exceed fifteen percent of the cash advance made to the customer rather than fifteen percent of the face value of the check. The bill provides a definition for money transmission services. The bill provides that a separate check-cashing license is required for each business location. Under current law, a retailer is exempt from licensure if the retailer periodically cashes incidental checks, without charging a fee or being paid consideration. The bill exempts from licensure such a retailer who engages in incidental check-cashing for a fee or other consideration of not more than two dollars or three percent of the check amount, whichever is less. The bill provides that if a purchase is made at the time the check, draft, or money order is cashed, a fee or other consideration may not be charged for the service. The bill revises fees paid for check-cashing licenses, requiring the two hundred fifty dollar application fee for each license, but allowing an individual who is applying for multiple licenses to pay the five hundred dollar investigation fee for only the first application.

MEDICAL, MILITARY, PUBLIC AND MUNICIPAL AFFAIRS

H.3498 *PRESCRIPTION INFORMATION PRIVACY ACT* Rep. Lourie

This bill prohibits patient prescription drug information from being transferred without the written consent of the patient. Penalties are established for failure to comply.

H.3521 *LICENSURE AND REGULATION OF OPTOMETRISTS* Rep. Kirsh

This bill conforms the statutes on the licensure and regulation of optometrists to the statutory and administrative framework established for professional and occupational boards. The bill makes various other revisions including a clarification that therapeutically-certified, optometric education courses may be taken while attending school rather than after graduation.

WAYS AND MEANS

S.1 *PROPOSED CONSTITUTIONAL AMENDMENTS TO AUTHORIZE LOTTERIES AND TO PROHIBIT VIDEO POKER* Sen. Passailaigue

This joint resolution proposes two amendments to the SC Constitution, both questions to be submitted to the voters at the next general election for representatives. The first proposed amendment would authorize state-conducted lotteries with resulting revenue to be used for specified improvements and enhancements for educational programs and purposes. The second proposed amendment would prohibit operation of the video game with a free play feature.

H.3480 *"SCHOOL-TO-WORK" TAX CREDIT* Rep. Rast Stuart

This bill provides a credit against the corporate income tax in an amount equal to ten percent of the total qualified investment of a business or an industry for hiring a student in a public secondary education "school-to-work" program.

H.3482 AMENDMENT TO HOSPITALITY TAX ACT Rep. Kelley

Current law allows that revenue generated by the hospitality tax must be used for certain purposes. One of those purposes is "cultural, recreational, or historic facilities." This bill adds language providing that these facilities must be "substantially used or visited by tourists."

H.3483 SC SALES AND USE TAX ACT Rep. McGee

This bill provides an exemption from sales tax for building materials purchased by a non-profit, tax exempt entity exclusively organized and operated in building and selling single family houses to selected buyers to promote home ownership. (Under current law, these selected buyers, as one requirement for purchasing such a home, must perform a minimum number of hours of volunteer labor for the non-profit entity.) The bill also excludes from the definition of "gross proceeds of sale" and "retail sale" these items when withdrawn from inventory and donated to an entity to which the items could be sold sales tax exempt.

H.3484 PRESCRIPTION DRUGS UNDER STATE HEALTH PLAN Rep. Jennings

This bill requires the State Budget and Control Board to devise and implement a plan (by January 1, 2000) revising the prescription drug benefit for state health insurance plan members from the reimbursement method to a co-payment method. The bill also provides that after applicable deductibles have been satisfied by the member, the balance after the member's co-payment will be paid directly to the pharmacy.

**H.3501 STATE INCOME TAX/SALE & PURCHASE OF BUSINESS
REAL PROPERTY Rep. Davenport**

This bill provides that if real property used by a small business taxpayer as business real property is sold by him and, within a specified time, real property located in this State is purchased and used by this taxpayer as business real property, gain from the sale is recognized only to the extent that adjusted sales price of the old business real property exceeds the taxpayer's cost of purchasing the new business real property. The bill provides definitions for terms including but not limited to "small business taxpayer" and "business real property."

H.3502 LIMITATION ON RETIREMENT EARNINGS Rep. W. McLeod

This bill provides that the current limitation on the amount of earnings in a fiscal year that a retiree may receive under the State Retirement System and the Police Officers' Retirement System without the loss of retirement benefits does not apply to the earnings a retired member who is certified to teach in South Carolina receives while working as a classroom teacher in an elementary or secondary public school of this State after retirement.

**H.3508 TAX CREDIT FOR TUITION AND CERTAIN SCHOOL
SUPPLIES Rep. Campsen**

This bill provides a limited credit to SC residents against SC income tax liability for tuition paid by the taxpayer or for purchases of computer hardware, educational software, and books made by the taxpayer on behalf of certain dependents claimed by the taxpayer on the taxpayer's Federal income tax return. The bill also provides for a carry-forward for unused credit and authorizes the Department of Revenue to require appropriate documentation.

H.3522 POWERS OF MUSC BOARD OF TRUSTEES Rep. Altman

This bill authorizes the board of trustees of the Medical University of South Carolina to purchase, sell, or lease real and personal property for its authorized purposes upon those terms and conditions it deems advisable under certain conditions.

The *Legislative Update* is on the Worldwide Web. Visit the South Carolina General Assembly Home Page (www.lpitr.state.sc.us) and click on the "Quick Find Guide." On the next screen, click on "Legislative Updates." This will list all of the *Legislative Updates* by date. Click on the date you need.

SPECIAL NOTE: A cumulative index to the weekly issues of the *Legislative Update* has been added to the *Legislative Update* page on the Worldwide Web. Bills are listed in numerical order in this index. Each bill number is followed by a list of hypertext links (in chronological order) to every reference to that bill in any issue of the *Legislative Update* during the current session, 1999-2000. This is an easy way (just click on the links) to find summaries of bills introduced into the House and to follow the progress of a bill through House committees and on the floors of the House and Senate.

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